IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.960 OF 2005

Gundu Rau Chavan & ors. .. .. Appellants
Versus
Janu Mahadu Chavan deceased
(deleted) and ors. .. Respondents

Mr.V.B.Rajure for appellants

CORAM : P.V.KAKADE, J.

DATE : 5TH SEPTEMBER, 2005

P.C.:

1. The appellants have filed the present appeal against the judgment and order passed by VIIIth Ad-hoc Addl. District Judge, dated 27.12.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Kagal dismissing the suit by order dated 1.1.2000.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiffs filed the suit for partition and possession of the respective shares of the suit property

under the provisions of the Hindu Law on the ground that the suit properties were joint family properties and hence partition was sought for. The defendants contested the suit,inter alia, submitting that the partitions were already effected and in view of the previous litigation the suit was barred as res-judicata.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the suit was barred by res-judicata. It was also found that the defendant had proved that the partitions were already effected and parties were in possession of their respective shares and as such the suit for partition came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the trial court were legal and proper and dismissed the appeal. Hence the present appeal.

4. In this regard it must be noted that there were two earlier proceedings between the parties. The plaintiffs had filed Suit for partition being R.C.S. No.86/72 and it was decreed in trial court, but in Reg.

Civil Appeal No.27/1974 the suit for partition came to be dismissed. The Certified copies of the judgments are brought on record. The appellate court in Reg.Civil Appeal No..27 of 1974 had specifically concluded that partition of Survey No.63/3 was effected long back and there was no joint family as such remained and therefore, there was no question of any partition to be decreed and suit of the plaintiffs for partition came to be dismissed. The judgment was not challenged and therefore, became final. The entire record shows that the plaintiffs case for partition of the property cannot be accepted in view of this scenario. Again, admittedly the defendant no.16 had filed the suit being Reg. Civil Suit No.149 of 1973, it was decreed in favour of defendant no.16 and the appeal preferred by the defendants against that order being Reg. Civil Appeal No.248 of 1976 also came to be dismissed and that judgment became final. Therefore, both the courts held that the present plaintiffs had no right to claim partition, as previous judgment in R.C.A.No.27 of 1974 is binding upon them in respect of the suit property. Both the courts below therefore, concurrently found that the suit was barred by principles of res-judicata.

. I do not see any reason why this finding should be interfered with in view of the factual aspects of the evidence and hence the appeal stands dismissed.